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File No. O. Pass Port/47

Legal. DEPARTMENT

A. BRANCH

Subject:— Opinions under the Indian Passport Act. 1920.

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C O N T E N T S.

Legal Department File No. C. Passport 1947

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K.N.P.
8/5
S.C.

Officer of the R.L.A.

Rule 23 of the Rules go verning the issue of Passports and Visas provides :-

"It should be regarded as an inverianke rule that in all cas2s of change of name reference to the former name should appear on the passport as made out e.g. :-

(i) where the change has been effected by deed poll, public notification or other legal instrument :-

"A B (new name) formerly

C D (old name) "

and the particulars of the deed poll or other insturment should be noted on the application form

(ii) where the change has been effected by custom :-

"C D (original name) known as

A B (new name).

Clause (ii) has no application in the present case. Under clause (i) change of name van be effected by deed poll, public notification or other legal instrument. In his application to the Pallport Officer at page 1 ante Mr. Trocchi has stated that a notificatioj regaring the change of his name is appearing in the Edionurgh Gazette. Ut is not known whether it has bt now appeared. The declaration signd before the Notary Public at page 5 cannot be considered a deed poll (see page 3 of the Ebcyclopedia of Forms and Precedents Vol. XI). Nor does it appear to be a legal instrument prescribed by any law. Consequently it appears desiranle to await the notification in the Edinnurgh Gazetter or to insist on the exexution of a deed poll in proper form.

Remembrancer of Legal Affairs.

U.R. to Passport Office , No. 834, dated the 23rd January 1947.

K.N.P.
8-5-56
4.c.

L.D.R.I.No. 2783 dt. 8-3-1947

Submitted with reference to the Passport Office notes at p. 6 ante.

2. It appears that one Mr. Pranjivan Umedbhi Patel of Karamsad, District Kaira, has married a second wife (Mrs. Taraben) on 5-10-1946 (i.e. before 6-11-1946 - the date on which the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, came into force). His first wife (Mrs. Lalitaben) is alive and is staying wity him only. ~~date on which the Bombay prevention of Hindu Bi~~ An application for a passport for the second wife is pending nefore the pasaport Officer. In the meanwhile, the uncle of the first wife has represented from Mombasa (Africa) to the Passport Officer and the D.M. Kaira, that Mr. Patel's second marriage is illegal and that no passport facilities should be granted to the second wife till the legal proceedings against Mr. Patel to be taken by him as the guardian of the first wife, are finally decided by a court of law. The D.M. Kaira, has made a thorough inquiry in the matter (vide his report at p. 5 ante - inquiry papers at pp. 8-20 ante). Since there was no offence committed in this case as revealed oy the inquiry the D.M. has duly countersigned the passport application of the second wife along with the renewla for-ms for Mr. Patel. In this connection the passport Ocficer onserves as under :-

"The marriage of Pranjiwan with Taraben is legal, I do not see how we can refuse a passport to her. R.L.A. may advise."

K.N.P.

8/5
A.C.

Office of the R.L.A.

Seen and returned.

The second marriage of Mr. Pranjivandas Umedbhai Patel with Taramatinai does not constitute an offence under section 5 of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 as the marriage was contracted before the Act came into force. Consequently, the view expressed by the Passport Officer in his note dated 5-3-1947 is correct.

SD/-

O.C.
Remembrancer of Legal Affairs.

U.R. to Passport Officer, No. 3135 dated the 31st March 1947.

K.N.P./8/5

4 C.

In his letter dated 23-3-1947, Mr. Bahirshet states that Mr. L.D. Hudson has given him a post. dated cheque of 9-4-47 for the amount of Rs. 33,000/- Mr. Hudson intends to leave India before that date, probably, Mr. Bahirshet apprehends that the cheque given by Mr. Hudson may be dishonoured.

Giving of a cheque in lieu of money already due with the knowledge that the drawer has no funds in the Bank does not amount to an offence but is only a civil wrong (8 Luck. 286). If Mr. Bahirshet has reasonable grounds to suspect that Mr. Hudson has no funds in the Bank, and thatthe cheque is likely to ne dishonoured with the result thathis claims woule be defeated his only remedyito move the court for an order under XXXVIII rule 1 (b) of the Code of Civil Procedure 1908 . It is stated that no Passport has been granted to Mt, Hudson. t apprehensions entertained by Mr. Bahirshet that Mr. Hudson intends to leave India with a view to defeat his claims would not be a ground for refusal of passport under rule 20 of the Passport Rules. The view exposed ny the Passport officer in his note dt. 9-3-47 is coreect and the papers may beseen and returned.

Sd.
9/4

ALR. I agree A may be doue

Sd.

R.T.K. 10/4

R.L.A

U.R.T. Passport officer No. 3776 of 17-4-1947

K.N.P.
8/5
4 C.

Office of the R.L.A.

In this case, a pleader, who, to all intents and purposes, is a private individual, requires information about Mr. Joglekar's address and the date of his departure for Africa. The information is not required by a court of law. It is for the Passport Officer to decide whether the information is of such nature thatpunlic interests would suffer by its disclosure. Legally, the Passport Officer is not nound t supply the information required by the pleader.

Sd.
P.M.Lad 22/4

o.c. Remembrancer of Legal Affairs.

U.R. to Passport Officar No. 4093 dated the 22nd April 1947.

K.N.P.
8/5
4 C.

Officer of the R.L.A.

A passport once issuded cannot be cancelled exept for reasons of state or with the holder's consent (see R.L.A's opinions Nos. 793, dated 28-1-1941 and 140-P, dated 1-3-1938). The view taken by the Passport Officer at P. 15 ante is correct.

Sd.

D.V. Vasa

Remembrancer of Legal Affairs.

U.R. to Passport Office, No. 3367, dated the 7th April 1947.

K.N.P.
8/5
4 C.

Office of the R.L.A.

It was presumed from the Political & Services Department note, dated 11-4-1947, that the question raised for the R.L.A's consideration was whether the declaration made by Mr. Usha alias Vimla Manek Desai was actionable, that is to say, whether she can be prosecuted for the offence under section 181, I.P.C. Whether she can be Prosecuted under section 182 for giveing the false information was not specifically raised by the P.& S.D. For this reason as well as for the reason that it was not an extraditable offence the R.L.A. in his last opinion did not consider this point.

The offences under section 181 and section 182, I.P.C., are different offences and the fact that Mrs. Usha alias Vimla cannot be prosecuted ujder section 181, I.P.C., for having made a false declaration does not mean t at she cannot be prosecuted also for the offence under section 182, I.P.C. The section requires three essentials:

(1) Giving of an information to a public servant.

(b) The information must have been known or believed to be false by the giver.

(3) The information must have been given with the intention to cause, or knowing it likely that it will cause such public servant -

(a) to do or omit ot do anything which he ought not to do or omit to do if the true facts were known to him, or

(b) to use his lawful power to the injury or annoyance of any person.

In the present case Mrs. Usha alias Vimla applied for a passport and in support of it she produced a declaration which was known or believed to be false; and thereby she induced the passport officer to issue a passport which he would not have done if it were known that her marriage with Mr. Manek Dewsai was not legal. Consequently, Mr.Usha alias Vimla can be prosecuted for the offence under section 182, I.P.C. I agree with the view taken by the Civernment of India

Sd.

K.M.P.
8/5

o.c. Remembrancer of Legal Affairs.
Office No.318 Comfl, dated the 19 July 1947

Office of the R.L.A.

Mrs. Margaret Mowbray Grant, the divorced wife of Mr. Frank Edward William Pym, has after her divorce assumed the name of Margaret Mowbray Ward and has made an affidavit to this effect before the Chief Presidency Magistrate. Being desirous of going back to the United Kingdom she has now applied for a passport in her awsumed name and a question has arisen as to whether a passport can be issued to her in her new name. In this connection the Passport Officer obserces :-

"R.L.A. may advise whether the affidavit before the Chief Presidency Magistrate is enoughto change the name or whether it has tonhe notified in the Gazette before it can be recognised. Perhaps the affidavit is enough authority. Regarding styling her in the passport we shall have to style her as "Mrs. Margaret Mowbray Ward Previously Mr. Margaeet Mowbray Pym, former wife of Mr. Frank Edward William Pym" in accordance with Rule 5 of the Passport Rules. The reference to the previous name and husband is necessary under that Rule".

R.L.A. os requested to advise.

Rule 5 of the "Rules Governing the issue of Passports and Visas provides that :-

"Married women who are British sunjects derive their British nationality from that of their husnands, irrespective of the nationlity they possessed before marriage. In every case, therefore, full particulars of the husband's (or late husband's) nationality should be given as provided for in Rule 4 above. This applies equally to a divorced woman, who should be described as "the former wife of .... ". It is therefore clear that that the applicant willhave to be described in the passport as the former wife of Mr. Pym.

The next question is whetherthe change of surname from Gazette to Ward can be recognised. In this connection Rule 23 of the Rules Governing the issue of Passports

and Visas is pertinent. In the present case Mrs. Grant has not changed her name by any deed poll, notification or other legal instrument and hence her affidavit before the C.P.M. cannot be considered as sufficient authority for change of name (cf. R.L.A's opinion No, 834, dated 23 .1.1947). English Law does not require any formality for change of name but it is nefessary that such change should be publisly notified.

Sd.

C.c. Remembrancer of Legal Affairs.

U.R. to Passport Office, No. 7725 dated the 25th July 1947.

K.N.P.
8/5
4 C.

Officer of the R.L.A.

Section 181 of the Indian Penal Code provides :

"Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorised by law to administer such oath or affirmation makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Under section 43 a person is said to be "legally bound to do" whatever it is illegal in him to omit and the word "illegal" is applicable to every thing which is an offence or which is prohibited by law or which furnished ground for cigil action. It is, therefore, apparent that unless the making of a false declaration for passport is an offence or is prohinited by law or furnishes ground for civil action. Mrs. Usha alias Vimla Manek Desai cannot be prosecuted for having made a false declaration under section 181 I.P.C. Rule 8 of the Riles governing the issue of passports and visas provides that all persons applying for British Indian passports are required to complete a declaration in Form A; and it is in this Form that Mrs Usha alias Vimla has made a declaration that she is the wife of Mr. M.F. Desai. These rules relate to passports to persons going out of the British India etc. The power to issue passports to British subjects and to British protected persons is held to be a prerogative of the Crown and is independent of any statutory provision; and in edercise of the delegated power of the prerogative right of the Crown these rules are made (see R.L.A's opinion dated 20-7-1938). Consequentky rule 8 being not reàtable to any statutory provision, the making of a false declaration thereunder would not be an offence under section 181 I.P.C.

Underg section 6 of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, the abetment of a bigamous marriage is an offence punishable with imprisonment of either description for a term which may extend to six months or with fine or with both, unless the abettor proves that he had reason to believe that the marriage was not a bigamous marriage. It appears from the ruling in Hamad (1931,

32 Cr. L.J. 1210) that the party who goes through the marriage with another knowing that the latter has a former spouse living can be convicted of the offence of abetment of a bigamous maarriage under section 493 I.P.C. Consequently Mrs.Usha alias Vimla can be prosecuted for the offence of abetment under section 0 of the Bombay Prevention of Hindu Bigamous Marriages Act 1946 only if it could be shown that sshe knew at the date of her marriage with Mr. Desai that his former wife was still alive; but the offence being punishable with imprisonment for a term which may edtend to six months it would not be legally feasible to claim her extradition from Kenya (see section 9 of the Fugitive Offenders Act, 1881 read with section 19 of the Indian Extradition Act, 1903.

Sd.

S.S. Remembrancer of Legal Affairs.

U.R. to Passport Office, No. 294 -Comfl, dated the 4th July 1947.

16/5.

K.N.P. 8/ 4 C.